No. 83-6417

In The

SUPREME COURT OF THE UNITED STATES

October Term 1983

Estate of
WILLIS CORNELIOUS,
Deceased.

TRUDY ANN HALL,
Appellant,
v.
HETTIE TAYLOR,
Respondent.

APPEAL FROM

THE SUPREME COURT OF THE STATE OF CALIFORNIA

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

The constitutional question presented in this appeal is well stated in the dissenting opinion of Justice Work of the California Court of Appeal:

> "The true question posed in this appeal is: Should an adult, emancipated person (appellant) be barred by an artificial legal presumption from establishing her true parentage where neither her natural mother nor presumed father object; the state will not be called upon to bear any burden, financial or otherwise; the natural father has publicly acknowledged paternity; and where no persons' paramount legitimate interests will be affected?

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OPINIONS BELOW

The opinion of the California Supreme Court in this case has not yet been placed in the official reports. The opinion is, however, appended hereto as Appendix A. The opinion of the California Court of Appeal is officially reported at 133 Cal.App.3d 684; and said opinion is also appended hereto as Appendix B. The trial court decision is not officially reported, but is appended hereto as Appendix C.

JURISDICTION

The underlying legal action herein, presently pending in the Superior Court in California, is a probate proceeding. In that proceeding appellant herein challenged the validity of a California statutory conclusive presumption, as applied to her, as being a denial of due process and repugnant to the Constitution. The California Supreme Court, in a judgment entered on January 26, 1984, sustained the validity of the statutory presumption as applied to appellant. Appellant filed a notice of appeal, in the California Supreme Court and the Superior Court (the court possessed of the record), on February 29, 1984. The appellate jurisdiction of this Court is invoked pursuant to 28 USC §1257(2). Japan Line, Ltd. v. County of Los Angeles (1979) 441 US 434, 441, 99 S.Ct. 1813, 1817.

STATUTORY PROVISION IN QUESTION

California Evidence Code §621(a):

> "(a) Except as provided in subdivision (b), the issue of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage."

STATEMENT OF CASE

As noted previously, this action is a probate proceeding pending in the Superior Court of California.

Willis Cornelious died intestate on July 24, 1980. Following the death of Mr. Cornelious Hettie Taylor ("Respondent"), who is not related to Mr. Cornelious, filed a petition to be appointed administratrix of his estate. (CT 42:21-26). Trudy Ann Hall ("Appellant") also filed a petition to be appointed administratrix of Mr. Cornelious' estate, and in her petition she set forth the fact that she is Mr. Cornelious' only child. (CT 42:28, 43:1-3).

At the hearing on the petitions of appellant and respondent the following facts were either proven or, pursuant to an offer of proof by appellant's counsel, accepted as proven by the trial court:

(a) Arzina Fuller is the mother of appellant (CT 44:4-6);

(b) At the time appellant was conceived Arzina Fuller was married to, and cohabiting with, David Fuller (CT 44:1-2);

(c) At the time of the hearing appellant was 27 years of age, emancipated from her mother's home, and married with a family of her own (CT 44:18-20);

(d) Mr. Cornelious acknowledged appellant as his daughter during his lifetime (CT 44:22-23);

(e) Appellant frequently visited Mr. Cornelious during his lifetime, stayed overnight in his home, and accompanied him on errands and visits to the doctor (CT 44:25-27);

(f) Appellant began her relationship and association with Mr. Cornelious when she was fifteen (15) years old, and said relationship and association continued until Mr.

Cornelious died (CT 45:1-4);

(g) Since appellant has the sickle cell anemia trait, and neither Arzina Fuller nor her husband David Fuller has the sickle cell disease or trait, it is biologically impossible for David Fuller to be the natural father of appellant (CT 45:6-10, CT 23-25).

Respondent's counsel noted that, pursuant to California Evidence Code §621(a), appellant was conclusively presumed to be the daughter of David Fuller. Counsel for appellant argued that the application of the conclusive presumption to bar appellant from proving that Mr. Cornelious is her father would be unconstitutional. (Appendix, C-2).

The trial court rejected appellant's petition to be administratrix, concluding as a matter of law that

> "Pursuant to the conclusive presumption of paternity set forth in Section 621 of the Calif. Evidence Code, the petitioner TRUDY ANN HALL is conclusively presumed to be the child of the marriage of ARZINA FULLER and DAVID FULLER. Accordingly, the petitioner TRUDY ANN HALL is not the daughter of the decedent WILLIS CORNELIOUS and the 'parent and child relationship' does not exist between her and the decedent as required for succession and priority of right to Letters of Administration in the decedent's estate pursuant to California Probate Code Sections 225 and 422" (Appendix, C-5 & 6).

Appellant appealed the decision of the trial court.* On appeal she, again, argued that application of the conclusive presumption in §621(a) to bar her from proving that Mr. Cornelious is her father was a denial of due process and, accordingly, uncon-

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*While said appeal was pending David Fuller, the person §621(a) presumes to be appellant's father, died.

stitutional. The Court of Appeal, with Justice Work dissenting, affirmed the decision of the trial court. (Appendix B).

In his dissenting opinion Justice Work noted that "(a)lthough objectors point to a substantial state interest in upholding the conclusive presumption, there is none in the context of these facts" (Appendix, B-12)(emphasis added).

Appellant petitioned for a hearing before the California Supreme Court, and a hearing was granted. In her petition, and in oral argument before the court, appellant reiterated the argument she raised in each of the courts below; i.e., that application of the conclusive presumption in §621(a) to bar her from proving that Mr. Cornelious is her father was an unconstitutional denial of due process because (1) no state interest or policy is supported, served or furthered by application of the presumption in this case, and (2) application of the presumption denies appellant two constitutionally protected rights.

After oral argument, but prior to taking the matter under submission, the court requested counsel to respond to two additional questions; each of which concerned appellant's ability, under apposite California probate statutes, to qualify to be administratrix of Mr. Cornelious' estate if appellant's constitutional challenge was upheld. (Appendix D). Appellant's response to the questions is appended hereto as Appendix E.

In its opinion the California Supreme Court made no reference to appellant's ability to qualify to be administratrix. The court only addressed the constitutional question and, with the chief justice dissenting, decided the question against appellant and affirmed the trial court. (Appendix A).

The opinion of the court, in a single paragraph, sets forth the state interests, or "social policies", upon which the presumption in §621(a) is based. (Appendix, A-5). However, nowhere in the opinion are those interests or policies, or any one

or more of them, applied to the facts of this case. Nowhere does the opinion assert or imply that it promotes the integrity of the family unit "when husband and wife are living together as such" (Appendix, A-5). Nor could such an assertion be made since David Fuller is deceased and appellant has long been an emancipated adult.

Nowhere does the opinion assert or imply that it protects "the welfare of children" (Appendix, A-5). Nor could such an assertion be made since appellant is an adult and there are no children involved in this matter.

Nowhere does the opinion assert or imply that it insures "the stability of titles and inheritance" (Appendix, A-5). Nor could such an assertion be made since this action is a probate proceeding, and California has a comprehensive scheme of statutory provisions relative to titles and inheritance with which appellant, and anyone else, must comply in order to inherit.

In her dissenting opinion Chief Justice Bird made the same observation made by Justice Work of the Court of Appeal:

> "The majority assert that substantial state interests are promoted in this case by maintenance of the conclusive presumption in Evidence Code section 621, subdivision (a). That assertion is <u>completely</u> <u>without</u> <u>support</u>, either in the majority's opinion or in the record" (Appendix, A-13)(emphasis added).

We note two additional facts that are material to consideration of the question presented on appeal to this Court.

First, appellant's mother has acknowledged from the beginning of the probate proceeding that Mr. Cornelious is appellant's father. (Appendix, A-3).

Second, if the conclusive presumption in §621(a) was not applied in this case, appellant would qualify, under California's comprehensive probate statutory scheme, to (1) be administra-

trix of Mr. Cornelious' estate, and (2) inherit said estate as his only child. See Appendix E.

REASONS WHY QUESTION IS SUBSTANTIAL

The following are the reasons why the question presented on this appeal is so substantial as to require plenary consideration by this Court.

A. The Opinion Of The California Supreme Court Is Not Only In Patent Conflict With This Court's Opinion In Vlandis v. Kline, It Is Also In Conflict With The Opinions Of The Justices Of This Court Who Have Not Embraced, Or Fully Agreed With, The Vlandis v. Kline Majority

In Vlandis v. Kline (1973) 412 US 441, 452, 93 S.Ct. 2230, 2236, this Court held that the Due Process Clause of the Fourteenth Amendment to the United States Constitution is violated when a conclusive (irrebuttable) presumption "is not necessarily or universally true in fact, and when the State has reasonable alternative means of making the crucial determination." See also Cleveland Board of Education v. LaFleur (1974) 414 US 632, 646, 94 S.Ct. 791, 799 ("the conclusive presumption embodied in these rules, like that in Vlandis, is neither 'necessarily (nor) universally true,' and is violative of the Due Process Clause.").

The conclusive presumption in §621(a) is not necessarily or universally true in fact. More importantly, however, the presumption as applied in the present case has been proven false;i.e., the presumed father, David Fuller, was definitely not appellant's father. (Appendix, A-4).

Further, with respect to the present case (a probate proceeding) the "crucial determination" as far as the State of California is concerned is whether or not appellant is the daughter of Mr. Cornelious. As noted previously, California's comprehensive

probate statutory scheme provides, in this case as it has in others, an excellent means by which said determination can be made.

The California Supreme Court opinion in this case, then, is in patent conflict with Vlandis v. Kline, supra. Moreover, (a) no state interest or public policy was served or supported by the application of the presumption in question against appellant, and (b) as we discuss in detail below, the application of said presumption deprives appellant of two constitutionally protected rights. These two additional, material facts so exacerbate the conflict between the California Supreme Court opinion and Vlandis v. Kline that, we submit, the state court opinion even conflicts with the opinions of the Justices of this Court who did not join in the Vlandis majority.

The opinion of the California Supreme Court now stands as precedent for the proposition that a conclusive presumption may be applied, to the deprivation of constitutional rights, in a fact situation where said application neither protects nor promotes a state interest or public policy. We respectfully submit that the mere statement of this clearly unconstitutional proposition evidences the necessity for review, and reversal, of the state court opinion.

B. Application Of The Conclusive Presumption In §621(a) Deprives Appellant Of Two Constitutionally Protected Rights Without Due Process

This Court stated in Santosky v. Kramer (1982) ____ US ____, 102 S.Ct. 1388:

> "In Lassiter, it was 'not disputed that state intervention to terminate the relationship between (a parent) and (the) child must be accomplished by procedures meeting the requisites of the Due Process Clause.' (citation omitted) The absence of dispute reflected this

Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment" (102 S.Ct. at 1394).

See also Quillon v. Walcott (1978) 434 US 246, 255, 98 S.Ct. 549, 554 ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected."); Cleveland Board of Education v. LaFleur (1974) 414 US 632, 639, 94 S.Ct. 791, 796 ("This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.").

In the present case appellant began her parent-child relationship with Mr. Cornelious when she was fifteen (15) years old, and said relationship continued, for over ten (10) years, until Mr. Cornelious' death. (CT 45:1-4). Moreover, Mr. Cornelious acknowledged appellant as his daughter during his lifetime. (CT 44: 22-23). And, under California Civil Code §7004(a)(4), the stipulated facts in this case raise a rebuttable presumption that Mr. Cornelious is the natural father of appellant. In the face of these facts the California Supreme Court has summarily terminated appellant's parent-child relationship with Mr. Cornelious by allowing the application of the conclusive presumption in §621(a) against appellant. Clearly, the application of said presumption in this case violates appellant's fundamental liberty interest noted in Santosky, Quillon, and LaFleur.

Application of the conclusive presumption in this case also denies appellant a constitutionally protected property interest without due process.

"In Board of Regents v. Roth (citations omitted), the Court stated: 'Property interests, of course, are not created by the Constitution. Rather, they

are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits'" (Texaco, Inc. v. Short (1982) ____ US ____, 102 S.Ct. 781, 789-790).

Under the apposite probate statutes of the State of California appellant not only qualifies to be administratrix of Mr. Cornelious' estate, she also qualifies to inherit said estate. Accordingly, appellant has a constitutionally protected property interest in said estate, created by the California probate statutes. Summarily barring appellant from said inheritance by application of the conclusive presumption in §621(a), therefore, violates yet another of appellant's constitutional rights.

The summary deprivation of two constitutional rights resulting for the opinion of the California Supreme Court, at the very least, raises the question presented on this appeal to a level so substantial as to require plenary consideration by this Court.

C. The Status And Nature Of This Case Make It An Appropriate Case For Plenary Consideration

In light of the stipulated facts, constitutional rights, and lack of state interests or public policies in this case, the question presented on this appeal provides this Court with an optimum vehicle by which it may again speak to the question of conclusive presumptions and the constitutional limits on their application.

D. The State Court Opinion Stands As Precedent For Selective Protection Of Constitutional Rights

In the present case the California Supreme Court majority opined that, because the constitutional rights involved in this

case differ from the rights involved in Stanley v. Illinois (1972) 405 US 645, 92 S.Ct. 1208, and In re Lisa R.(1975) 13 Cal.3d 636, appellant's constitutional rights are not worthy of protection. See Appendix, A-9 - A-11. Such denial of equal protection relative to constitutional guarantees, and selective enforcement of constitutional mandates, strikes at the very core of said guarantees and mandates. This, again, bespeaks the substantial nature of the question presented on this appeal.

E. The State Court Opinion Stands As Precedent For The Application Of A Conclusive Presumption Solely To Serve Or Promote A Private Interest

At page 11 (Appendix, A-11) of its opinion the California Supreme Court sets forth the real interest promoted and served by barring appellant from proving that Mr. Cornelious is her father; i.e., an, at best, questionable private interest of the now-deceased David Fuller in having his reasonable, but erroneous, belief that appellant was his daughter preserved as a matter of law. Moreover, the promotion of such a specious interest constrained the court to misstate certain material facts.

First, the court states that "(t)he familial relationship Trudy had with David Fuller was far more palpable than the biological relationship she had with Willis Cornelious" (Appendix, A-11). Such a statement not only lacks support in the record and in the court's opinion, it is also contrary to material, undisputed facts in this case. There is no information in the record relative to the relationship appellant had with David Fuller, other than the fact that he was the husband of appellant's mother, and appellant lived in the household of her mother and Mr. Fuller prior to appellant's marriage and emancipation. On the other hand, there is significant information in the record relative to the parent-child relationship between appellant and Mr. Cornelious. See pages

2-3, and 8, of this jurisdictional statement.

Moreover, it must be remembered that, under the probate laws of the State of California, Mr. Cornelious, too, is presumed to be the father of appellant. See Civil Code §7004(a)(4). Thus, the relationship between appellant and Mr. Fuller certainly had no more indigenous significance or weight than the relationship between appellant and Mr. Cornelious.

Second, the court states that "(n)ow, after 27 years as the daughter of David Fuller, Trudy seeks to establish that another man was her father, and she does so not for reasons of filial piety but solely for financial considerations" (Appendix, A-11). The erroneous message this statement carries is obvious; i.e., that appellant had no contact and/or relationship with Mr. Cornelious prior to his death, but seeks, after his death, to broach a relationship with him for financial reasons only. Again, the facts of this case aptly reveal the misrepresentation inherent in the statement.

The California Supreme Court has allowed the application of the conclusive presumption in question to promote and serve a private rather than public or state interest. The gravity of such an error, and potential adverse effect of such precedent, justifies plenary review and consideration of this case.

CONCLUSION

Based upon the reasons and facts set forth above, we respectfully submit that the question presented in this appeal is so substantial as to require plenary consideration by this Court.

Respectfully submitted,

LLOYD EDWARD POOKS

Counsel for Appellant

No. _____

In the

SUPREME COURT OF THE UNITED STATES

Estate of	)
	)
Willis Cornelious,	)
	)
Deceased.	)
_____	)
	)
TRUDY ANN HALL,	)
	)
APPELLANT,	)
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v.	)
	)
HETTIE TAYLOR,	)
	)
Respondent.	)
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APPENDICES

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SUPREME COURT
FILED
JAN 26 1984
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C O P Y

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Estate of

WILLIS CORNELIOUS,

Deceased.

_____/

L.A. 31631
Super. Ct. 10992

TRUDY ANN HALL,

Petitioner and Appellant,

v.

HETTIE TAYLOR,

Petitioner and Respondent.

_____/

Appellant Trudy Ann Hall challenges the constitutionality of the rule of Evidence Code section 621, subdivision (a), that "the issue of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage."[1/] Hall contends

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1/ Evidence Code section 621, subdivision (a) provides: "Except as provided in subdivision (b), the issue of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage."

Subdivision (b) allows the mother or the presumed father to rebut the presumption of subdivision (a) by presenting blood test evidence of nonpaternity to the court within two years of the child's birth. These limited exceptions to the conclusiveness of the presumption were enacted in 1980 and 1981.

that application of the presumption to bar her from proving that Willis Cornelious, deceased, was in fact her natural father, denies her due process.

Willis Cornelious died intestate, leaving neither a spouse nor legitimate children. His surviving sisters nominated Hettie Taylor to administer his estate. Trudy Hall applied for letters of administration on the basis of Probate Code section 422, which gives priority to children over siblings, or their nominees. Section 422 requires the person claiming priority under that section to be entitled to succeed to all or part of the decedent's estate. To meet that requirement Hall had to show that a parent-child relationship existed between herself and decedent before his death. (Prob. Code, § 255, subd. (a).) The existence of such a relationship may be established for these purposes by showing an unrebutted presumed relationship or one judicially declared under the Uniform Parentage Act, set forth in Civil Code section 7000 et seq.[2/] (Prob. Code, § 255, subd. (d).)

2/ Hall alleges that she will be able to show the existence of parent-child relationship with Cornelious by presenting evidence of a presumed relationship under Civil Code section 7004, subdivision (a)(4), which sets forth a rebuttable presumption of parentage where a man "receives the child into his home and openly holds out the child as his natural child."

The trial court found that the requisite parent-child relationship did not exist because under Evidence Code section 621, subdivision (a) Trudy was conclusively presumed to be the daughter of David Fuller. The court therefore appointed Hettie Taylor as administratrix of Cornelious' estate.

Trudy appeals from the order denying her petition for appointment as administratrix. (See Prob. Code, § 1240.) She contends that application of the conclusive presumption of Evidence Code section 621, subdivision (a) to bar her from proving that Willis Cornelious was, in fact, her natural father, denies her due process.

The trial court held a hearing on Trudy's due process challenge to Evidence Code section 621, subdivision (a). At that hearing the following facts were established or accepted as proven:

Trudy's mother, Arzina Fuller, was married to David Fuller. They lived together as husband and wife from the time of their marriage up to the time of the hearing, including the time when Trudy was conceived. David Fuller was named as Trudy's father on her birth certificate. Although David was not impotent or sterile during the time of Trudy's conception, Arzina said they had not been sleeping together during that period. She stated that Willis Cornelious was Trudy's natural father. Trudy was informed of this when she was 15 years

old. From that time on until Willis' death in 1980, Trudy visited him, accompanied him on errands and occasionally stayed overnight in his home. Willis identified Trudy as his daughter to his friends. Trudy continued to live as part of the Fuller household until she became emancipated. David Fuller was never told that Trudy was not his child.[3/] Trudy was 27 years old and had a family of her own at the time of the hearing.

There is also evidence to prove that Trudy is not David Fuller's daughter. She has the genetic trait for sickle cell anemia; this means that either her natural mother or her natural father must carry the trait. Since neither Arzina nor David Fuller carried it, it is biologically impossible for David to be Trudy's natural father.

As noted, the trial court rejected Trudy's due process attack on the conclusive presumption of Evidence Code section 621, subdivision (a) that she was the daughter of her mother's husband. She contends that the ruling preventing her from showing a parent-child relationship with Willis Cornelious is unreasonable and a denial of due process.

"The principle established by section 621 is of great antiquity, having been a maxim of the Roman law, which was

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3/ David Fuller died sometime after the trial court hearing.

copied by the common law. (Estate of Walker, 180 Cal. 478, 485.) It is referred to in 2 Coke Upon Littleton, section 244a. It has been remarked in Estate of Mills, 137 Cal. 298, 301, that Shakespeare was familiar with the rule, for he made reference to it in King John, act I, scene 1: 'King John. -- Sirrah, your brother is legitimate; Your father's wife did after wedlock bear him; And, if she did play false, the fault was hers; Which fault lies on the hazards of all husbands That marry wives.'" (S.D.W. v. Holden (1969) 275 Cal.App.2d 313, 316.)

The conclusive presumption of legitimacy of section 621, subdivision (a) is, of course, a rule of substantive law. (Kusior v. Silver (1960) 54 Cal.2d 603, 619.) It codifies the principle that when husband and wife are living together as such, the integrity of the family should not be impugned. "The husband is deemed responsible for his wife's child if it is conceived while they are cohabiting; he is the legal father and the issue of biological paternity is irrelevant." (Keaton v. Keaton (1970) 7 Cal.App.3d 214, 216.) The rule promotes important social policies: preservation of the integrity of the family, protection of the welfare of children by avoiding the stigma of illegitimacy and keeping them off welfare rolls, and insurance of the stability of titles and inheritance. (Kusior v. Silver, supra, 54

Cal.2d at p. 619; S.D.W. v. Holden, supra, 275 Cal.App.3d at pp. 316-317; In re Lisa R. (1975) 13 Cal.3d 636, 650-651; County of San Diego v. Brown (1978) 80 Cal.App.3d 297, 303.)

The conclusive presumption of Evidence Code section 621, subdivision (a) has consistently been upheld against constitutional attack despite the scientific advances that have increased the reliability of blood tests. (See Kusior v. Silver, supra, 54 Cal.3d 603; County of San Diego v. Brown, supra, 80 Cal.App.3d 297; In re Marriage of B. (1981) 124 Cal.App.3d 524; Vincent B. v. Joan R. (1981) 126 Cal.App.3d 619.) In Kusior, we concluded that the Legislature's failure in 1953 to enact that part of the Uniform Act on Blood Tests to Determine Paternity (former Code Civ. Proc., §§ 1980-1980.7; now Evid. Code, §§ 890-897) which specifically would have enabled the result of a blood test to overcome the conclusive presumption of legitimacy indicated a legislative intent to stand firm on the conclusive presumption.

The presumption of legitimacy has also been the subject of much commentary and criticism. (See, e.g., Note, California's Conclusive Presumption of Legitimacy: Jackson v. Jackson and Evidence Code section 621 (1968) 19 Hastings L.J. 963; Comment, California's Conclusive Presumption of Legitimacy--Its Legal Effect and Its Questionable Constitutionality (1962) 35 So.Cal.L.Rev. 437; Recent

Developments, California's Tangled Web: Blood Tests and the Conclusive Presumption of Legitimacy (1968) 20 Stan.L.Rev. 754; Comment, The Irrebuttable Presumption of California Evidence Code section 621 (1979) 12 U.C.Davis L.Rev. 452.) In apparent response to such commentary, the Legislature recently adopted limited exceptions which essentially take the form of a statute of limitations. In 1980 and 1981, it added subdivisions (b) through (g) to section 621, which allow the mother or the presumed father within two years of the child's birth to present blood test evidence disputing the presumed paternity. The probable rationale for this limited exception was described in a law review article: "In the case of a young child the most palpable relation that anyone has to the child is a biological relationship. The child has no personality, he can communicate with no one, and no one can be said to have exercised a formative influence on his character. But in the case of an older child the familial relationship between the child and the man purporting to be the child's father is considerably more palpable than the biological relationship of actual paternity. A man who has lived with a child, treating it as his son or daughter, has developed a relationship with the child that should not be lightly dissolved and upon which liability for continued responsibility to the child might be predicated. This social

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relationship is much more important, to the child at least, than a biological relationship of actual paternity. . . . [¶] Where a strong social relationship to the child has not yet developed, the only basis for a duty on the husband's part to support the child is biological fatherhood of the child. Inasmuch as blood tests are the most reliable evidence of nonpaternity, they should be admissible on the issue of biological paternity in all cases where this issue is the recognized foundation of liability for child support -- cases . . . that involve a contest over the legitimacy of a young child. . . . [¶] The adoption of a statute of limitations in lieu of the present tangle of evidentiary rules offers the obvious advantage of greatly simplifying the law and at the same time molding the law to closer conformity with the relevant policies. . . . The legislature should address itself squarely to the problem of defining a period after the birth of a child during which biological paternity will be determinative of a husband's duty to support his wife's child, and it should announce clearly that after this period has expired biological nonpaternity shall be irrelevant. . . ." (Recent Developments, California's Tangled Web: Blood Tests and the Conclusive Presumption of Legitimacy, supra, 20 Stan.L.Rev. at pp. 761-765; see also In re Marriage of B., supra, 124 Cal.App.3d at pp. 530-531.)

In the present case, appellant's constitutional attack on the conclusive presumption is based solely on its application to her. She contends that it denies her due process in preventing her from proving that Cornelious was her natural or biological father. She argues that her interest in doing so outweighs the state's interest in preventing her from rebutting the presumption. We do not agree.

The cases on which appellant primarily relies -- In re Lisa R., supra, 13 Cal.3d 636 and Stanley v. Illinois (1972) 405 U.S. 645 -- differ significantly from the present situation. In both Stanley and Lisa R., the putative fathers were seeking to establish their legal relationship with children who otherwise had no parents and were wards of the state. In Stanley it was undisputed that the putative father sired, lived with, and supported the children. Upon the mother's death, Illinois law automatically removed the children from the putative father's custody without any showing of his unfitness as a parent. The United States Supreme Court held that Stanley was constitutionally entitled to a hearing on his fitness before the children could be removed from his custody.

In Lisa R., Victor sought to establish that he was the natural father of a five-year-old ward of the court whose mother and presumed father were dead. Victor had lived with

Lisa's mother before and after Lisa's birth, and his name appeared on her birth certificate. He was deprived of Lisa's custody when her mother returned to her husband and took Lisa with her. After learning that Lisa was a ward of the court, Victor sought to gain custody on the ground that he was Lisa's natural father. He was prevented from doing so by the presumption (former Evid. Code, § 661) declaring Lisa's mother's husband to be her father. Although that particular presumption could be rebutted by the husband, wife or the state, it was conclusive as to Victor.

We held that due process required allowing Victor the opportunity to rebut the presumption of parentage because the state's interest in maintaining the presumption was outweighed by Victor's substantial private interest in establishing and enjoying his relationship as Lisa's father. We found no competing private interests against Victor's claim and noted that, as in Stanley, the private interests which Victor sought to preserve "arose from more than the mere biological fact that he is Lisa's biological father." (13 Cal.3d at p. 649.)

In the present case, Trudy's private interests are simply not as weighty as those of the putative fathers in Stanley and Lisa R. who sought to care for and nurture their own children. Here, the alleged natural father is dead so that there is no possibility of an ongoing relationship. All

Trudy can hope to gain is the right to inherit Willis' estate, an interest of a lower order which, of course, is pitted against the competing similar interests of Willis' sisters.

The state's interests, by contrast, are substantial. The policies promoted by the conclusive presumption of legitimacy are well-served by its application here. The familial relationship Trudy had with David Fuller was far more palpable than the biological relationship she had with Willis Cornelious. Trudy was reared and supported by David, who was named as her father on her birth certificate. He was never told of the present proceeding, and he died thinking he was Trudy's father. Now, after 27 years as the daughter of David Fuller, Trudy seeks to establish that another man was her father, and she does so not for reasons of filial piety but solely for financial considerations. Her equities are simply not in the same class as those of the fathers in Stanley and Lisa R. The due process clause does not compel a holding equating the natural urge to look after one's flesh and blood with the equally natural, but somewhat baser, impulse to take care of property one's biological father has failed to dispose of by will. In sum, Trudy has failed to advance a reason

why the Constitution demands that the legislative judgment concerning her parentage should be voided.

The order is affirmed.

KAUS, J.

WE CONCUR:

MOSK, J.
RICHARDSON, J.
BROUSSARD, J.
REYNOSO, J.
GRODIN, J.

C O P Y

Estate of WILLIS CORNELIOUS, Deceased

L.A. 31631

DISSENTING OPINION BY BIRD, C.J.

I respectfully dissent.

In In re Lisa R. (1975) 13 Cal.3d 636, cert. den. sub nom., Porzuczek v. Towner 421 U.S. 1014, this court adopted a balancing test for review of due process challenges to a conclusive presumption of paternity. That test requires a case-by-case weighing of the state's interests in maintaining the presumption against the competing private interests in rebutting it. (In re Lisa R., supra, 13 Cal.3d at pp. 648, 651, fn. 17.)

The majority assert that substantial state interests are promoted in this case by maintenance of the conclusive presumption in Evidence Code section 621, subdivision (a).[1/] That assertion is completely without support, either in the majority's opinion or in the record.

1/ Unless otherwise specified, all statutory references are to the Evidence Code.

Appellant Hall has a legitimate private interest in establishing that Cornelious was her natural father. In the absence of competing state interests entitled to equal or greater weight, it is a violation of due process to deny Hall the opportunity to rebut the presumption.

The recognized interests of the state in maintaining the conclusive presumption of paternity are (1) to preserve the integrity of the family unit (In re Lisa R., supra, 13 Cal.3d at p. 650; Kusior v. Silver (1960) 54 Cal.2d 603, 619); (2) to safeguard the welfare of minor children by protecting them from the stigma of illegitimacy (In re Lisa R., supra, 13 Cal.3d at p. 650), and by ensuring that parents fulfill their support obligations (County of San Diego v. Brown (1978) 80 Cal.App.3d 297, 303); and (3) to ensure that titles to property and rights of inheritance will not be disturbed on the basis of evidence which is scientifically unsubstantiated (Id., at p. 306), or which is unduly difficult to obtain (S.D.W. v. Holden (1969) 275 Cal.App.2d 313, 316-317). None of these interests are advanced by application of the conclusive presumption in this case.

First, permitting Hall to rebut the conclusive presumption would not threaten the integrity of an existing family unit. Her presumed father, Fuller, is dead. Since the family unit composed of Fuller, Hall, and

Hall's mother no longer exists, it cannot be disrupted by Hall's effort to establish that Cornelious was her father. Nor would the integrity of the continuing relationship between Hall and her mother be jeopardized, since Hall's mother supports her efforts to establish that Cornelious was her natural father.

Hall commenced this proceeding without Fuller's knowledge. If Fuller had learned of her effort to prove that another man was her biological father, the integrity of their family might indeed have been threatened. However, that problem is not before this court. Fuller died without learning of this proceeding, apparently still believing that he was Hall's natural father. On these facts, the state's interest in preserving the integrity of family units is not advanced by application of the conclusive presumption.[2/]

2/ Even if Fuller had learned of this proceeding and a disruption of family relations had resulted, Hall's interest might well have outweighed the state's interest in preserving the integrity of family units. The Legislature has already recognized that, once a child becomes an adult, the state's interest in preserving the family unit is diminished. For example, an adult may sever the parental relationship by electing to be adopted, even without the consent of the natural parents, by any person older than the adoptee. (See Civ. Code, § 227p, subd. (a); compare Civ. Code, § 224 [consent of parents generally required for adoption of minor child].) Thus, where an adult is concerned, the state in its own laws does not recognize the interest the majority purport to protect.

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The majority appear to suggest that Hall's action impinges on some ill-defined interest of Fuller in preserving, even from his grave, the integrity of his family unit. However, this court has held that the state's interests in promoting marriage and preserving the integrity of family units are not served by application of the conclusive presumption when both the presumed father and the mother are dead. (In re Lisa R., supra, 13 Cal.3d at p. 650.) In this case, the presumed father is dead and the mother supports her daughter's efforts to establish her true paternity. Application of the conclusive presumption in these circumstances does nothing to preserve or promote the institutions of marriage and family.

The state's interest in providing for the support of minor children is also inapplicable in this case. Application of the conclusive presumption of paternity may be justified to prevent a man from contesting his paternity of, and responsibility to support, a minor child who was born during his marriage to the child's mother. Once the child has developed -- and is conscious of -- a familial relationship with the presumed father, applying the pesumption against the presumed father serves to protect the welfare of the child. (In re Marriage of B. (1981) 124 Cal.App.3d 524, 530-531.) This is true regardless of whether the man who has acted as a father is in fact the biological father. (See ibid.)

Here, however, the conclusive presumption is challenged not by the presumed father, but by the child, who is a married adult. The state's interest in providing minor, dependent children with a father's support is not implicated by Hall's attempt to establish her true paternity.

Similarly, the policy of protecting children from the stigma of illegitimacy does not apply to an adult "child's" voluntary and informed challenge to the conclusive presumption of paternity. An adult who voluntarily chooses to place her own legitimacy in question is capable of making an informed, mature choice to accept any attendant risks, and should be permitted to do so.

Finally, the majority suggest in passing that the conclusive presumption of paternity advances a state interest in ensuring the stability of titles and inheritance. (Majority opn., ante, at p. ___.*) This pronouncement is apparently based on two decisions of the Court of Appeal: County of San Diego v. Brown, supra, 80 Cal.App.3d 297 and S.D.W. v. Holden, supra, 275 Cal.App.2d 313. Neither case actually turned on a question of title or inheritance, and neither is applicable to the facts of this case.

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*Typed maj. opn. at pp. 5-6.

Brown was a county action to compel payment of child support. The child was conceived while the defendant, who was not impotent, was cohabiting with his wife. The parents later separated. The defendant made an offer of proof that it was "racially impossible" that he was the child's father, since his wife and child were white and he was black. The trial court, applying the conclusive presumption of paternity in section 621, barred receipt of the proffered evidence. The Court of Appeal affirmed. Without citation to any authority, the court stated that "the stability of titles to property and rights of inheritance" should not be disturbed "by scientifically unsubstantiated genetic assertions." (80 Cal.App.3d at p. 306.)

In the present case, the trial court assumed, for purposes of its ruling on the conclusive presumption issue, that Hall could prove by reliable scientific evidence that Fuller was not her biological father. Thus, Brown is inapposite here.

In S.D.W. v. Holden, supra, 275 Cal.App.2d 313, the Court of Appeal reversed a judgment entered after a jury trial in a paternity action. The jury determined that the defendant was the father and was responsible for the support of a minor child born during the mother's marriage to another man. In reversing, the Court of Appeal

held that the trial court had erroneously admitted certain evidence offered to prove that the husband could not be the biological father. (275 Cal.App.2d at p. 315.) Admission of the evidence was considered erroneous since the husband should have been conclusively presumed to be the child's father under section 621. (Id., at pp. 314-317.)

The impact of the presumption on matters of inheritance was touched upon by the Holden majority in response to a point raised by the dissent. The dissent argued that the defendant should be required to supply proof of the potency of the husband in order to rely on the conclusive presumption. (Id., at pp. 319-320 (dis. opn. of Christian, J.).) The majority disagreed. Although no issue of inheritance was presented by the facts of the case, the majority expressed concern that proof that a deceased husband had not been impotent at the time of the child's conception would often be unavailable due to the passage of time. (Holden, supra, 275 Cal.App.2d at p. 317.) In addition, the court noted that such evidence -- when it was available -- would often be uncertain and speculative, and that its intimate nature would present "opportunities for recrimination, fraud and blackmail." (Ibid.)

Those concerns are irrelevant here. Hall does not seek to rebut the presumption that Fuller was her

father by proof that he was impotent. Rather, she seeks to present reliable scientific evidence relating to the genetic trait for sickle cell anemia.

In any event, the state's interest in ensuring the stability of rights of inheritance is adequately protected by various provisions of the Probate Code which require the prompt assertion and determination of claims of heirship and entitlements to distribution of estates. (See Prob. Code, §§ 1025.5, 1080, 1082.) The state's interest is in promoting orderly distribution of estates in accordance with the order of succession required by Probate Code sections 200 et seq. It has no interest in preventing any particular person from establishing that he or she is a member of one of the statutory classes entitled to inherit. It makes little sense to erect an additional barrier to a child's claim that she is an heir entitled to distribution of an estate. The comprehensive statutory scheme specifically provides for such a claim and restricts any potential destabilizing effect that may result from its assertion.

The majority also suggest that Hall's claim to the Cornelious estate must be weighed against the competing private interests of Cornelious' sisters. While such a weighing of competing private interests is proper, only those interests which outweigh those asserted by the person

seeking to rebut the presumption should prevail. (See Vincent B. v. Joan R. (1981) 126 Cal.App.3d 619, 625-626, app. dism. (1982) ___ U.S. ___.*) In the distribution of intestate estates, the Legislature has determined that public policy favors distribution to the closest relative. (See Prob. Code § 200 et seq.) In light of that public policy, appellant Hall's interest in the estate appears to outweigh the interests of Cornelious' sisters.

The majority devote considerable space to a discussion of the recently-adopted exceptions to the conclusive presumption of paternity in section 621. (Majority opn., ante, at pp. ___-___.**) Those exceptions permit the mother or the presumed father to rebut the presumption by blood test evidence. The majority place particular stress on the statute of limitations applicable to those exceptions, which requires that the blood test evidence be offered within two years of the child's birth. (§ 621, subds. (c) & (d).) The policies supporting the two-year limitation period concern the continuity of parental care and support of minor children -- concerns that arise most often in the context of a presumed father's effort to deny his paternity and avoid support obligations. (See Recent Developments, California's Tangled Web: Blood

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*103 S.Ct. 31.
**Typed maj. opn. at pp. 7-8.

Tests and the Conclusive Presumption of Legitimacy (1968) 20 Stan.L.Rev. 754, 761-765.) Those policies have no relevance here, where an adult "child" seeks to establish her true paternity and where parental care and child support are not in issue.

The majority stress the relatively weak private interest of appellant Hall, who seeks only to inherit property and not to establish the legal basis for an ongoing parent-child relationship. I object to characterizing her attempt to establish that Cornelious was her natural father as one undertaken "not for reasons of filial piety but solely for financial considerations. . . ." and as the product of a "somewhat baser" impulse. Those gratuitous remarks fail to take into account Hall's offer of proof that she developed a social relationship with Cornelious after being told as a teenager that he was her natural father. They also unfairly denigrate her desire to establish her true paternity, a desire no less legitimate because the most tangible benefit to be obtained is an inheritance.

Hall has a legitimate private interest in establishing that Cornelious was her natural father. The alleged state interests supporting application of the conclusive presumption of paternity do not outweigh her private interest. Under this court's holding in

In re Lisa R., supra, 13 Cal.3d 636, it is a violation of due process to deny her the opportunity to rebut this presumption. Accordingly, I would reverse the judgment.

BIRD, C.J.

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

COURT OF APPEAL - FOURTH DIST.
FILED
JUL - 8 1982
KEENAN G. CASADY, Clerk
DEPUTY CLERK

Estate of WILLIS CORNELIOUS, aka WILLIS CORNELIUS, Deceased.	
TRUDY ANN HALL, Appellant, v. HETTIE TAYLOR, Respondent.	4 Civ. No. 24624 (Super. Ct. No. 10992)

APPEAL from an order of the Superior Court of Imperial County, Hon. William E. Lehnhardt, Judge. Affirmed.

Lloyd Edward Tooks for Appellant.

Pinney & Caldwell and Clifford C. Caldwell for Respondent.

Trudy Ann Hall appeals a superior court order denying her petition for appointment as administrator of the estate of Willis Cornelious.

APPENDIX B

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Willis Cornelious died on July 24, 1980. On October 29, 1980, Hettie Taylor, respondent here and the nominee of the Cornelious' two sisters in Arkansas, filed a petition in superior court to be appointed administrator of Cornelious' estate. On November 6, 1980, Trudy Ann Hall filed a petition in the same court seeking to be appointed administrator of Cornelious' estate. Hall alleged she was Cornelious' daughter.

At a hearing on the two petitions, the following facts were established or accepted as proven:

Hall's mother, Arzina Fuller, was married to David Fuller in 1933. The couple lived together as husband and wife from 1933 through to the time of trial, including the time when Hall was conceived. Hall's birth certificate names David Fuller as her father. David was not impotent during the period of Hall's conception. David and Arzina Fuller had six children other than Hall. Arzina testified the five children born before Hall and the child born a year and a half after Hall were all fathered by David.

Arzina testified Cornelious was Hall's father. Hall was told of this when she was 15. David Fuller was never told. Hall frequently visited Cornelious after being told she was his daughter. She accompanied Cornelious on errands and visits to the doctor, and stayed overnight in his home. Cornelious acknowledged Hall as his daughter in front of his friends.

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Hall remained a part of the Fuller household until she became emancipated from the family. She was 27 at the time of trial. Hall has the sickle cell anemia trait, which means either her natural mother or natural father must have either the trait or the disease. Since neither Arzina Fuller nor David Fuller had the sickle cell disease or trait, it is biologically impossible for David to have fathered Hall.

The trial court appointed Hettie Taylor administrator of the estate as the nominee of Cornelious' sisters. The court concluded Hall was the daughter of Arzina and David Fuller, applying the conclusive presumption of Evidence Code section 621.[1] The court held the parent-child relationship necessary for Hall's priority of right to letters of administration to the estate of Cornelious (Prob. Code, §§ 422, 423) did not exist.

Hall contends the conclusive presumption in Evidence Code section 621, subdivision (a), is unreasonable, arbitrary, capricious and a denial of due process as applied against her in this action. She cites County of San Diego v. Brown, 80 Cal.App.3d 297, as basing due process analysis on whether the

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[1]Evidence Code section 621, subdivision (a), says: "Except as provided in subdivision (b), the issue of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage."

state has reasonable alternative means of making such a crucial determination, other than by the conclusive presumption (id. at p. 305). She interprets this language to allow her to establish a reasonable alternative method of determining David Fuller is not her father. She claims to have provided an alternative method in the sickle cell anemia test, which proves David is not her biological father. However, her interpretation of Brown is mistaken.

The "crucial question" according to Brown, supra (80 Cal. App.3d 297), is not whether there are alternative means to establish the presumed father's nonpaternity, but whether there are reasonable means to establish the alleged biological father's paternity (id. at p. 306). Brown thus reaffirms Kusior v. Silver, 54 Cal.2d 603, holding blood test evidence cannot be used to controvert a conclusive presumption of paternity. The reasoning is simple: Although in some cases blood factors may operate to eliminate a certain man as the father, they do not designate a specific individual as the biological father. The purpose underlying the statutory presumption of conclusiveness does not imply a legislative doubt as to the scientific reliability of blood tests, but rather the purpose is to determine the legal father and to achieve certain social policies upholding the integrity of the family (Kusior v. Silver, supra, 54 Cal.2d 603, 619).

There are no relevant distinctions between sickle cell anemia blood tests and blood typing tests. The sickle cell test may be a viable means of proving David is not Hall's biological father, but it does not provide a reasonable means of proving Cornelious was Hall's father. As a result, the test may not be used to controvert the conclusive presumption (see In re Marriage of B., 124 Cal.App.3d 524, refusing evidence of tissue-typing test to demonstrate nonpaternity).

Hall also claims Evidence Code section 621, subdivision (a), violates due process because the state has no legitimate interest in precluding her from proving Cornelious was her father. She cites In re Lisa R., 13 Cal.3d 636, which held a conclusive presumption similar to the one here (Evid. Code, § 661) violated due process. Hall points to the state interests underlying the presumption articulated in Brown: child welfare, protecting the child from the stigma of illegitimacy, and upholding the integrity of the family (County of San Diego v. Brown, supra, 80 Cal.App.3d 297, 303). She contends these state interests are not involved here because: (1) she is an emancipated, married adult; (2) the family unit cannot be impugned because of the death of David Fuller after trial; and (3) the state's interest in protecting the child from the stigma of illegitimacy does not of itself warrant exercise of the presumption.

In Lisa R., supra, 13 Cal.3d 636, the mother and her husband, the presumed father, were dead. Lisa was five years old and a dependent of the juvenile court. The issue was whether the juvenile court had jurisdiction to determine another man was Lisa's father and whether this other man had standing to assert his paternity. Lisa's mother was not cohabiting with her husband at the time of conception and thus the rebuttable presumption of former Evidence Code section 661 (now Civ. Code, § 7004, subd. (a)(1)), rather than the conclusive presumption here, was involved. The presumption was conclusive in effect, however, against the putative father because section 661 did not include him among the persons entitled to rebut the presumption.

The court in Lisa R. found there were no competing private interests against the putative father's claims, since both the mother and the presumed father were dead. The mother had been separated from her husband and the putative father had actually lived with the mother and contributed to the child's support both before and after the birth. The mother used the putative father's name during this period and the putative father's name appears on Lisa's birth certificate. The putative father was deprived of Lisa's custody only when the child's mother returned to her husband. When the putative father found out Lisa was a ward of the court, he consistently sought to assert

his rights as her father. After reviewing the "private interests" of the father seeking to assume the rights and duties of fatherhood, and the countervailing interests of the state, the Supreme Court held due process required an opportunity be given to the father to rebut the presumption (In re Lisa R., supra, 13 Cal.3d 636, 651). The court stressed the private interests of the putative father arose from more than the mere biological fact he was Lisa's natural father (id. at p. 649).

In contrast, Vincent B. v. Joan R., 126 Cal.App.3d 619, involved a man seeking visitation rights as a child's biological father. The man had a long-standing affair with the child's mother and had visited the child regularly for seven years. He took the child out on Saturday afternoons and on occasion the child spent the night at his house. The court applied the conclusive presumption of Evidence Code section 621. It presumed the mother's ex-husband was the child's father and denied the man visitation rights. The court found as a competing private interest the fact that the presumed father, although no longer living with the family due to the divorce, had supported and raised the child in the past (id. at p. 626). In addition, the putative father had never exercised actual or legal custody over the child, and thus never shouldered any significant responsibility with respect to the daily

supervision, education, protection, or care of the child (id. at p. 626, citing Quilloin v. Walcott, 434 U.S. 246).

The facts are unique here because Hall claims her own illegitimacy. There is no argument as to the applicability of the conclusive presumption of Evidence Code section 621 to this situation. Hall contends she should have an opportunity to rebut the presumption. She argues there are no state or competing private interests here because she is emancipated and the presumed father (David) has died.

The constitutionality of the presumption must be decided on the particular facts of the case at bar (In re Lisa R., supra, 13 Cal.3d 636, at p. 651, fn. 17). the facts here show Hall's interest is not as great, nor entitled to as much constitutional consideration, as the interests of the putative father in Lisa R. The premise of the holding in Lisa R. was the putative father's right to raise his own children (In re Lisa R., supra, at p. 648, citing Stanley v. Illinois, 405 U.S. 645). That premise is missing here due to Cornelious' death and Hall's emancipation.

In addition, there are other interests which support the presumption of Evidence Code section 621, including the stability of titles to property and rights of inheritance and the sanctity of the family (County of San Diego v. Brown, supra, 80 Cal.App.3d 297, 306), and the speed and efficiency of judicial

inquiry (In re Lisa R., supra, 13 Cal.3d 636, 650). The facts here show the familial relationship Hall had with David Fuller was much more palpable than the biological relationship she had with Cornelious. Hall was raised and supported by David. Her birth certificate names David as her father. David and Arzina Fuller were married over 48 years without separation. David was never told he was not Hall's father, nor was he told of this proceeding for fear of ruining the marriage.[2] Hall was aware of Cornelious' status for 12 years (9 years during which she was of majority). Now, after 27 years as the daughter of David Fuller, Hall claims the paternity of another man. Cornelious never shouldered any of the responsibility of fatherhood, nor did he make any legal efforts to assert his paternity.

Hall has failed to demonstrate any compelling private interests favoring her rebuttal of the presumption, save her desire to inherit the Cornelious estate. Under the facts here, Cornelious could not have claimed paternity (Vincent B. v. Joan R.) and David Fuller could not have denied paternity (Brown, supra, 80 Cal.App.3d 297) in a court proceeding. In enacting

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[2]David's death after trial has no effect on the outcome here. The sanctity of the family extends far beyond the father-daughter or husband-wife relationship. Moreover, David's death underscores the need for stability in the rights of inheritance.

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the conclusive presumption, the Legislature must have intended only one man be adjudicated a child's father (Vincent B. v. Joan R., supra, 126 Cal.App.3d 619, 627). It follows Hall should be conclusively presumed the daughter of the man conclusively presumed to be her father, David Fuller. The rights of daughterhood are no more constitutionally protected than the rights of fatherhood. The application of the conclusive presumption under the facts here does not deprive Hall of due process.

The order is affirmed.

CERTIFIED FOR PUBLICATION.

CAZARES, J.*

I CONCUR:

STANIFORTH, Acting P.J.

*Assigned by the Chairperson of the Judicial Council.

I respectfully dissent.

The true question posed in this appeal is: Should an adult, emancipated person be barred by an artificial legal presumption from establishing her true parentage where neither her natural mother nor presumed father object; the state will not be called upon to bear any burden, financial or otherwise; the natural father has publicly acknowledged paternity;[1] and where no persons' paramount legitimate interests will be affected? In the sterile factual context of the stipulated record with which we deal, I submit the answer is, no.

To achieve her ultimate goal, Trudy must establish she is the natural daughter of Cornelious. She is foreclosed from doing so unless she can first disprove she is not the natural daughter of Fuller, a feat the majority would legally bar her from accomplishing through the conclusive presumption in Evidence Code section 621, subdivision (a). We are not now concerned with whether Trudy can ever prove she is the daughter of Cornelious, she only asks to be allowed to disprove Fuller's paternity. If she is successful, she may well remain illegitimate. It is a risk she is willing to take and, at 27 years

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[1]We do not suggest Cornelious' purported acknowledgment was sufficient to establish legitimacy. (Civ. Code, § 230.)

of age, one she is competent to assess and assume.[2] Her mother concurs; Fuller is deceased and the only objectors are Cornelious' present next-of-kin whose adverse economic interests are obvious.

Although objectors point to a substantial state interest in upholding the conclusive presumption, there is none in the context of these facts. Those cited are illusory, not real:

1. Promotion of marriage and integrity of the family unit. Here the child is an adult and publicly proclaims her illegitimacy, a proclamation in which her mother joins. Fuller has died and with him whatever integrity the family unit still maintained after the inception of these proceedings. (Although Fuller was alive at the time of the hearing, his later death is a relevant fact.)

2. Promotion of "speed and efficiency of judicial inquiries in these circumstances." Whatever this means, it certainly is not paramount to the promotion of justice. (In re Lisa R., 13 Cal.3d 636, 650, 651.) Objectors do not tell us why judicial speed and efficiency should foreclose Trudy from establishing her illegitimacy as she chooses, nor why allowing

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[2]An adult child's desires, alone, can serve the family ties. It may be adopted over its parents' objections by any person ten years its elder. (Civ. Code, § 227p, subd. (a).)

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her to do so would be inefficient or involve substantial time consumption on the stipulated facts.

3. Promotion of stability of titles to property and rights to inherit. Title to Cornelious' property and rights to inherit are precisely what is to be determined in the probate proceeding. These rights are personal and the state has no conceivable interest in foreclosing any person from proving he or she falls within the statutory classes entitled to inherit.[3] Although the majority speaks of the relevance of County of San Diego v. Brown, 80 Cal.App.3d 297, in terms that blood tests are so unreliable they should not be used to negate a conclusive presumption of paternity because they do not "designate the specific individual as the biological father," this reasoning is not applicable here. First of all, the legislature now permits blood tests to be conclusive evidence of nonpaternity, and as evidence to support a finding of paternity. (Evid. Code, § 895.) Secondly, the draft ignores the fact Trudy does not attempt to use any blood test to prove Cornelious is her natural father, only to prove Fuller is not,

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[3]The dicta in County of San Diego v. Brown, 80 Cal.App.3d 297, 306, suggesting these factors may support upholding the conclusive presumption against an attack by a presumed father who refuses to pay child support, is in a factual matrix 180 degrees from this one and involved a statute dissimilar to the one with which we now deal in that it recognized no exceptions. There, the court emphasized the unreliability of genetic testing as the state of the art then existed. The Legislature now acknowledges certain blood tests have conclusive reliability, the state of the art has changed, and the parties here concede the conclusive reliability of the blood test used here.

a task which the parties have stipulated she can do with absolute certainty of result.[4]

A conclusive presumption is a substantive rule of law and cannot be unconstitutional unless it transcends the power of the Legislature. (Kusior v. Silver, 54 Cal.2d 603, 619.) The integrity of the family underlying the conclusive presumption is that expressed in Kusior, i.e., given a certain relationship (nonimpotent cohabitation) the husband of the mother of a child conceived in wedlock should be responsible for the care and welfare of that child.

In re Lisa R., supra, 13 Cal.3d 636, involved a minor ward of the court. Both her mother and the mother's husband (presumed father) were deceased. Although the child was born while her mother was married to the presumed father, it was at a time the two were not cohabitating. Therefore, Evidence Code section 621's conclusive presumption did not apply. However, the Evidence Code section 661 presumption was still applicable because the child was born during the marriage and, by virtue of that section, no one except the mother, husband or their

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[4]The stipulation was only for the purpose allowing the court to rule whether Evidence Code section 621, subdivision (a) absolutely barred Trudy from showing non-paternity. It will not insulate the test validity from challenge at trial.

issue was permitted to rebut this presumption. When the natural father attempted to do so, the statute was deemed conclusive as to him. The Supreme Court reversed, declaring the conclusiveness of the presumption denied the natural father due process in the absence of competing interests entitled to equal or greater weight. There, the paternal rights of the natural parent, who had lived with and contributed to the support of the child, was designated as her father on the birth certificate and always acknowledged her as his own, was deemed to outweigh the countervailing state interest. The court held that any potential adverse effect on Lisa's welfare by being taken from a foster home to which she had now become adjusted after an early traumatic life was not a state interest which could be used in this balancing. The state interest was narrower -- that of preventing the natural parent from establishing paternity. The court held the policy of not impugning the family unit was no longer relevant because both the mother and the presumed father were dead. Compare here where the presumed father is dead, the mother publicly acknowledges her infidelity and the child has known and accepted the fact of her actual illegitimacy since she was 15 years old.[5]

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[5]Why the surviving members of a family may not unanimously agree to familial self-destruction escapes me.

Speed and efficiency were given short shrift against considerations of the Bill of Rights, and the Due Process Clause in particular, in Stanley v. Illinois, 405 U.S. 645, 656.

Conclusiveness of the presumption will be justified in the normal situation where it is the presumed parent who seeks to avoid the burdens of legal parenthood. I recognize the need for a support relationship is more important to an older child than a biological one, while the only palpable relationship meaningful to a young child is biological. Therefore, a husband should be required to object to paternity early or be foreclosed from doing so. Thus, a husband should bear the burden of supporting wife's children if he does not object during the~~-~~the first two years after the child is born. (See In re Marriage of B., 124 Cal.App.3d 524, 530-531; Recent Developments, California's Tangled Web: Blood Tests and the Conclusive Presumption of Legitimacy (1968) 20 Stan. L.Rev. 754, 761-765.) That is not this case. Here, Fuller reared and supported Trudy apparently believing she was his natural daughter, while his wife and (later) his daughter kept the truth from him. As morally reprehensible, or as considerate, as this may have been, it is irrelevant to the policy question we now face.

In spite of the majority's denigration of the extent of Trudy's interest in being allowed to rebut the conclusive presumption (no compelling interest) only some interest is required, and if some interest outweighs the state's interest

in not allowing her to rebut it, the conclusive presumption should be no bar. (In re Lisa R., supra, 13 Cal.3d 636.) Being legally recognized as the daughter of her natural father cannot be said to be an insubstantial interest on Trudy's part, regardless of society's view of her motivation. Even if Trudy has no other interest than to inherit Cornelius' (relatively minor) estate, this must be deemed to outweigh the state's interest in preventing her from doing so.

I would reverse.

WORK, J.

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Attorneys for Petitioner, HETTIE TAYLOR

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF IMPERIAL

ESTATE OF WILLIS CORNELIOUS, aka WILLIS CORNELIUS, Deceased.	NO. 10992 ~~PROPOSED~~ FINDINGS OF FACT AND CONCLUSIONS OF LAW

The separate petitions of HETTIE TAYLOR and TRUDY ANN HALL for Letters of Administration in the above entitled estate came on regularly on December 21, 1980, in Department III of the above entitled Court, the Honorable WILLIAM E. LENHARDT, Judge, presiding without a jury, attorney LLOYD EDWARD TOOKS representing the petitioner TRUDY ANN HALL and attorney CLIFFORD C. CALDWELL of PINNEY & CALDWELL, representing the petitioner HETTIE TAYLOR.

The testimony of ARZINA FULLER, a witness on behalf of petitioner TRUDY ANN HALL was taken and attorney CLIFFORD C. CALDWELL made a motion for judgment based upon the conclusive presumption of California Evidence Code Section 621 and requested appointment of HETTIE TAYLOR as Administratrix of the estate of the decedent. LLOYD EDWARD TOOKS, attorney for the petitioner TRUDY ANN HALL,

APPENDIX C

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made an offer of proof, based on sickle cell anemia blood tests, to establish that TRUDY ANN HALL was not the daughter of the marriage between ARZINA FULLER and DAVID FULLER, but instead was the daughter of ARZINA FULLER and the decedent WILLIS CORNELIUS. Attorney, LLOYD EDWARD TOOKS, further argued that the application of the conclusive presumption of California Evidence Code Section 621 in this matter was unconstitutional. The Court having considered the evidence including a review of the cases and law cited and having heard the arguments of counsel, and being fully advised, makes the following findings of fact and conclusions of law:

PROPOSED FINDINGS OF FACT

The Court finds that:

1. The decedent, WILLIS CORNELIUS, died on July 24, 1980, a resident of Imperial County of the State of California.

2. All notices required by law have been given.

3. On or about October 29, 1980, a petition for Letters of Administration and for Authorization to Administer under the Independent Administration of Estates Act was filed by HETTIE TAYLOR, nominee of ROSIE YOUNG of Bradley, Arkansas, and NELLIE CORNELIUS of Pine Bluff, Arkansas, sisters of the decedent WILLIS CORNELIUS.

4. On or about November 6, 1980, a "Petition for Letters

of Administration" was filed by TRUDY ANN HALL. The petition alleged that TRUDY ANN HALL was the daughter of WILLIS CORNELIUS, deceased.

5. On or about November 17, 1980, a "Nomination of Administratrix" pursuant to California Probate Code §423 was filed by ROSIE YOUNG and NELLIE CORNELIUS, sisters of the decedent. Each nominated the petitioner HETTIE TAYLOR, as Administratrix of the estate of WILLIS CORNELIUS, deceased.

6. On or about November 17, 1980, a proof of publication was filed on behalf of HETTIE TAYLOR in these proceedings reflecting that a Notice of Death of WILLIS CORNELIOUS aka WILLIS CORNELIUS and of Petition to Administer Estate had been published.

7. At the hearing on December 21, 1980, petitioner TRUDY ANN HALL called ARZINA FULLER as a witness. The testimony of ARZINA FULLER established the following:

(a) ARZINA FULLER was married to a DAVID FULLER in 1933 and that said marriage is still in existence as a continuing relationship.

(b) ARZINA FULLER and her husband DAVID FULLER have six (6) children of said marriage not counting TRUDY ANN HALL. The oldest of said children was born approximately forty-five (45) years ago and the youngest was born on August 17, 1954.

(c) At the time TRUDY ANN HALL was conceived ARZINA FULLER was cohabiting with her husband DAVID FULLER.

(d) On or about March 8, 1953, ARZINA FULLER had a daughter by the name of TRUDY ANN HALL (FULLER) and that said TRUDY ANN HALL is a petitioner in this matter.

(e) The original certificate of live birth for the child TRUDY ANN HALL (FULLER) dated March 16, 1953 and signed by ARZINA FULLER names DAVID FULLER as the father of said child.

8. Pursuant to the offer of proof made by the attorney for TRUDY ANN HALL this Court, for the limited purpose of ruling on the Motion for Judgment based on California Evidence Code §621, has accepted as proven the following:

(a) That TRUDY ANN HALL is an adult person, age 27, emancipated from her mother's home, and with a family of her own.

(b) That the deceased WILLIS CORNELIUS acknowledged TRUDY ANN HALL as his daughter during his lifetime.

(c) That TRUDY ANN HALL frequently visited the deceased WILLIS CORNELIUS, stayed overnight in his home, and accompanied him on errands and visits to the doctor.

(d) That TRUDY ANN HALL began her relationship and association with the deceased WILLIS CORNELIUS when she was approximately fifteen (15) years old, and said relationship and association continued until WILLIS CORNELIUS died.

(e) Since TRUDY ANN HALL has the sickle cell anemia trait, and neither ARZINA FULLER nor her husband DAVID FULLER has the sickle cell disease or the trait, it is biologically impossible for DAVID FULLER to be the natural father of TRUDY ANN HALL.

9. There exists a strong social interest in promoting: (a) marriage and not impugning the family unit, and (b) the speed and efficiency of judicial inquiries in these circumstances, and (c) the stability of titles to property and rights of inheritance.

PROPOSED CONCLUSIONS OF LAW

From the foregoing findings of fact, the Court makes the following conclusions of law:

1. All notices as required by law have been given.

2. Pursuant to the conclusive presumption of paternity set forth in Section 621 of the Calif. Evidence Code, the petitioner TRUDY ANN HALL is conclusively presumed to be the child of the marriage between ARZINA FULLER and DAVID FULLER. Accordingly, the petitioner TRUDY ANN HALL is not the daughter of the decedent

WILLIS CORNELIUS and the "parent and child relationship" does not exist between her and the decedent as required for succession and priority of right to Letters of Administration in the decedent's estate pursuant to California Probate Code Sections 225 and 422.

3. The State of California has a strong social interest in the application of the conclusive presumption paternity set forth of California Evidence Code §621 in order to promote: (a) marriage and not impugn the family unit, and (b) the speed and efficiency of judicial inquiries in these circumstances, and (c) the stability of titles to property and rights of inheritance. The conclusive presumption is not unreasonable, arbitrary or capricious and there is a rational connection between the ultimate fact presumed and the facts actually proved.

4. The conclusive presumption of legitimacy as set forth in California Evidence Code Section 621 does not violate constitutional guaranties of due process and/or equal protection.

5. The petitioner HETTIE TAYLOR, has priority pursuant to California Probate Code Sections 422 and 423, to administer the decedent's estate as nomineee of the decedent's sisters, NELLIE CORNELIUS and ROSIE YOUNG.

/// /// ///

/// /// ///

6. HETTIE TAYLOR is appointed Administratrix of the decedent's estate and Letters shall issue on qualification and authority is granted to administer the estate under the Independent Administration of Estates Act.

DATED: February 1, 1981.

WILLIAM E. LENHARDT, Judge

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REMO C. MATTEOLI
CHIEF DEPUTY

DEPUTIES
JOHN C. ROSSI
ROBERTA GILMORE
DIANE MCHENRY
KENNETH A. WAGOVICH
SAN FRANCISCO

ROBERT F. JOHNSON
R. D. BARROW
LOS ANGELES

BAILIFFS
E. G. WILLIAMS
G. W. RODGERS
R. E. STOHLER

OFFICE OF THE CLERK

Supreme Court of California

SAN FRANCISCO, CALIFORNIA

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June 2, 1983

Lloyd Edward Tooks, Esq.
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Re: L.A. 31631 Estate of Cornelious

Dear Counsel:

The Court requests that counsel address the following question by letter brief:

1. Assuming for the sake of argument that section 621 of the Evidence Code violates due process, is appellant nevertheless barred from qualifying for letters of administration because of the provisions of subdivisions (a) and (d) of section 255 and subdivision (b)(1) of section 422 of the Probate Code?

2. Assuming for the sake of argument that section 621 of the Evidence Code violates due process, is appellant nevertheless barred from qualifying for letters of administration because she did not file an action "within a reasonable time after obtaining knowledge of relevant facts," as required by subdivision (a)(2) of section 7006 of the Civil Code?

Respondent's brief to be filed no later than July 5, 1983. Appellant's brief to be filed within 30 days thereafter

Very truly yours,

Laurence P. Gill

LAURENCE P. GILL
Clerk of the Supreme Court

LPG:dms

cc: Rec.
Reg.
L.A.
State Bar of California

APPENDIX D

LLOYD EDWARD TOOKS
2414 Kathleen Place
San Diego, California 92105
(619) 265-1242

July 19, 1983

Clerk of the Supreme Court
State of California
3580 Wilshire Boulevard
Los Angeles, California 90010

Re: L.A. 31631 - Estate of Cornelious

To the Honorable Rose E. Bird, Chief Justice,
and to the Honorable Associate Justices of
the Supreme Court of the State of California:

Appellant respectfully submits the following in response to the Court's request of June 2, 1983.

Compendious Response To Questions

FIRST QUESTION: Assuming for the sake of argument that section 621 of the Evidence Code violates due process, is appellant nevertheless barred from qualifying for letters of administration because of the provisions of subdivisions (a) and (d) of section 255 and subdivision (b)(1) of section 422 of the Probate Code?

ANSWER: No, because under the provision of Civil Code §7004(a)(4) the decedent (Willis Cornelious) is presumed to be the father of appellant, and said unrebutted presumption establishes the existence of a parent-child relationship between decedent and appellant, pursuant to subdivision (d) of section 255 of the Probate Code, and qualifies appellant to succeed to decedent's estate under the provision of subdivision (a) of section 255, and to receive letters of administration under the provision of subdivision (b)(1) of section 422.

SECOND QUESTION: Assuming for the sake of argument that section 621 of the Evidence Code violates due process, is appellant nevertheless barred from qualifying for letters of administration because she did not file an action "within a reasonable time after obtaining knowledge of relevant facts," as required by subdivision (a)(2) of section 7006 of the Civil Code?

APPENDIX E

ANSWER: No, because the mere existence of subdivision (a)(2) of section 7006 does not create a mandate for its use, and the Uniform Parentage Act (Civil Code §7000 et seq.) provides two, alternative, methods by which the existence of the necessary parent-child relationship between decedent and appellant may be established (i.e., (1) by one of the rebuttable presumptions set forth in Civil Code section 7004(a)(1)-(a)(4), or (2) by one of the legal actions in Civil Code section 7006); and since the existence of the parent-child relationship between decedent and appellant may be established by means of facts giving rise to the presumption in section 7004(a)(4) it was not necessary for appellant to pursue any of the actions contained in section 7006, including but not limited to section 7006(a)(2).

Elucidative Response To Questions (Points And Authority)

A. Subdivisions (a) and (d) of section 255, and subdivision (b)(1) of section 422, of the Probate Code do not bar appellant

As applied to the present case, subdivision (b)(1) of section 422 of the Probate Code provides that appellant must be entitled to succeed to all or part of the estate of decedent in order for appellant to be entitled to appointment as administrator of decedent's estate. Subdivision (a) of section 255 of the Probate Code provides that appellant is entitled to succeed to all or part of decedent's estate only if a parent-child relationship existed between decedent and appellant prior to the death of decedent. Section 255 further provides, in subdivision (d), that such a parent-child relationship did exist between decedent and appellant if such a relationship was (1) presumed and not rebutted pursuant to, or (2) established pursuant to, the Uniform Parentage Act.

Subdivision (d) of section 255, then, provides two, alternative methods by which appellant might prove the necessary parent-child relationship between decedent and herself: (1) by use of one of the presumptions set forth in subdivision (a) of section 7004 of the Civil Code, or (2) by having received a judicial determination of said parent-child relationship via a legal action filed pursuant to one of the subdivisions of section 7006 of the Civil Code. As stated in Griffith v. Gibson (1977) 73 Cal.App.3d 465:

> ". . . the Uniform Parentage Act provides not one but two methods of establishing the parent-child relationship. Section 7004, . . . , sets out the factual circumstances which will give rise either to a conclusive presumption of parentage by the male (Evid. Code §621) or a rebuttable presumption arising from any of the four factual situations delineated in section 7004, subdivision (a)(1), (2), (3) or (4). . . . .
> "The second method for determining the father-child relationship is by a legal action . . ."(73 Cal.App. 3d, at 471)(emphasis added).

See also subdivision (d) of section 255 ("For purposes of this division, a parent-child relationship exists where such relationship is (1) presumed and not rebutted pursuant to, or (2) established pursuant to, Part 7 (commencing with Section 7000) of Division 4 of the Civil Code")(emphasis added).

In the present case appellant has available to her an argument that the parent-child relationship between decedent and herself existed prior to decedent's death because said relationship was presumed (and to date has not been rebutted) pursuant to subdivision (a)(4) of section 7004; which subdivision provides that a man is presumed to be the natural father of a child if "(h)e receives the child into his home and openly holds out the child as his natural child." Not only is this argument available to appellant, but appellant has heretofore in the trial court made an offer of proof, accepted by the court, that includes some but not necessarily all of the evidence that fully supports said presumption:

> (a) decedent acknowledged appellant as his daughter during his lifetime (CT 44:22-23);
>
> (b) appellant frequently visited decedent during his lifetime, stayed overnight in his home, and accompanied him on errands and visits to the doctor (CT 44: 25-27);
>
> (c) appellant began her relationship and association with decedent when she was approximately fifteen (15) years old, and said relationship and association continued until decedent died (CT 45:1-4).

The fact that appellant has available to her the argument that her parent-child relationship with decedent is presumed under

section 7004(a)(4) in and of itself shows that neither section 255 nor section 422 of the Probate Code bars appellant from qualifying for letters of administration; i.e., if the trial court makes a finding consistent with appellant's presumption argument she will (1) be entitled to succeed to all of decedent's estate (§255(a)), and (2) qualify for letters of administration (§422(b)(1)). However, in order to show the Court that such an argument is not only available but also meritorious, we submit the following.

Assuming that section 621 of the Evidence Code violates due process, and this Court so holds, this matter will be sent back to the trial court where appellant will be allowed to prove that decedent was her father. In the trial court appellant will offer evidence that will give rise to the presumption in section 7004(a)(4). Respondent, on the other hand, will offer evidence that will give rise to the presumption in section 7004(a)(1); i.e., that the now-deceased David Fuller was appellant's father because he and appellant's mother were married and appellant was born during the marriage. See Respondent's Letter Brief, page three. The trial court will then resolve the conflict, created by the two presumptions, as required by subdivision (b) of section 7004:

> ". . . If two or more presumptions arise under this section which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls."

In support of her position that the conflict should be resolved with a determination that Mr. Cornelious was her father, appellant will offer arguments including, but not necessarily limited to, the following.

First, evidence that supports the aforementioned offer of proof is all that is necessary to give rise to the presumption in section 7004(a)(4). Appellant's frequent visits with decedent, including overnight visits at decedent's home, satisfies that portion of section 7004(a)(4) requiring that decedent receive appellant into his home. In interpreting the predecessor of section 7004(a)(4), the former section 230, this Court opined that "(t)he statutory receipt requirement is also fulfilled by the father's acceptance of the child into his home for occasional temporary visits"(In re Richard M. (1975) 14 Cal.3d 783, 795).

The section 7004(a)(4) requirement that decedent hold

appellant out as his natural child is satisfied by decedent's acknowledgment of appellant as his daughter; said acknowledgment having been made to, among others, one of decedent's doctors.

Second, unlike section 621 of the Evidence Code, an underlying purpose of which is to designate a legal father for a child (See County of San Diego v. Brown (1978) 80 Cal.App.3d 297, 303), subdivisions (a)(1) through (a)(4) of section 7004 seek to designate or determine the natural father of a child, i.e., the male who participated with the mother in the conception of the child. However, since appellant has the sickle cell anemia trait, and neither her mother nor David Fuller has the sickle cell disease or trait, it is biologically impossible for David Fuller to have been the natural father of appellant. See CT 45:6-10, CT 23-25.

It is both logical and axiomatic that the presumption (rebuttable) in favor of David Fuller being appellant's natural father cannot stand, or have any force or effect, in the face of such scientific evidence that Mr. Fuller was definitely not appellant's natural father.

Third, there are in this case no policy considerations that give the presumption in subdivision (a)(1) priority over the presumption in subdivision (a)(4). Indeed, any such considerations would be the same as those that support the presumption in section 621 of the Evidence Code and are absent from, or inapplicable to, the facts of this case.

Fourth, neither does the fact that the presumption in subdivision (a)(1) of section 7004 is based upon marriage give that presumption priority or preference over the presumption in subdivision (a)(4). Such an argument of preference would directly contradict the expressed and overriding purpose of the Uniform Parentage Act:

> "PURPOSE
> "Eliminate the distinction between, and unequal treatment of, children who heretofore have been classified as legitimate or illegitimate and to enact the Uniform Parentage Act"(See page fourteen of Exhibit H to Respondent's Letter Brief).

See also Civil Code section 7002 ("The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.").

Thus, while the two presumptions in question may have equal indigenous weight, under the facts of this case one (the presumption in subdivision (a)(1)) is expressly rebutted and shown to be false by scientific fact, while the other (the presumption in subdivision (a)(4)) stands unrebutted and uncontradicted. We respectfully submit that under such a circumstance the trial court would be legally constrained to make a finding consistent with the presumption in subdivision (a)(4).

B. The fact that appellant did not file an action pursuant to subdivision (a)(2) of section 7006 does not bar appellant from qualifying for letters of administration

As we noted, and discussed, previously, the existence of the parent-child relationship that allows appellant to qualify for letters of administration in this action may be proven in either one of two ways: (1) through one of the presumptions in Civil Code section 7004(a) or (2) by way of one of the legal actions set forth in Civil Code section 7006. See Probate Code section 255(d). Since appellant can establish the existence of the parent-child relationship between decedent and herself by use of the presumption in subdivision (a)(4) of section 7004, it is not necessary for appellant to have filed an action under subdivision (a)(2) of section 7006 or any other subdivision of the latter section.

Indeed, if a child was required to file an action under section 7006 notwithstanding the fact that the child's relationship with his or her father was presumed under section 7004(a), every child who someday wished to succeed to the estate of his or her father in this State would have to file such an action. We respectfully submit that the California legislature certainly did not intend such a circumstance.

Nor did the legislature intend to make the timely pursuit of an action under subdivision (a)(2) of section 7006, and a court determination of the nonexistence of a parent-child relationship presumed under section 7004(a)(1), (2) or (3), a precondition to the use, in a probate proceeding, of the presumption in section 7004(a)(4). Section 7004(b) provides the method by which conflicts in presumptions are resolved. In this case the nonexistence of appellant's presumed parent-child relationship with David Fuller will be established when the trial court, under section 7004(b), finds in favor of appellant's presumed parent-child relationship

with decedent.

While we have found no cases in which this Court has expressly addressed the issue of the sufficiency of subdivision (a)(4) of section 7004 as a basis for heirship, the Court did address a similar issue relative to the predecessor of that subdivision, former section 230 of the Civil Code:

> "The cases involving the right of a person born illegitimate to inherit directly from his father have uniformly held that section 230 is not qualified by section 255; that the two sections provide alternate methods by which a person may become the heir of his father" (Estate of Garcia (1949) 34 Cal.2d 419, 421).

We have found no evidence, within the Uniform Parentage Act or without, that subdivision (a)(4) of section 7004 is any less a sufficient basis for heirship than its predecessor, former section 230.

Section 7006, then, only provides an optional or alternative method by which a parent-child relationship might be declared, not a mandate or constraint applicable to all cases. Any argument that the mere existence of section 7006(a)(2) creates a mandate that a legal action under that section be pursued whenever a parent-child relationship is erroneously presumed under section 7004(a)(1), (2) or (3) carries with it the following untoward circumstances:

1. the existence of subdivision (a)(1) of section 7006 would create a mandate that such an action be pursued to declare the existence of the presumed parent-child relationships referred to therein;

2. the existence of subdivision (b) of section 7006 would create a mandate that such an action be pursued to declare the existence or nonexistence of the presumed parent-child relationship referred to therein.

If, on the other hand, legal consistency was eschewed and it was argued that only subdivision (a)(2) of section 7006 carried with it a mandate, the following incongruity would result:

1. such an argument would create a material distinction not found on the face of section 7006;

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In The

SUPREME COURT OF THE UNITED STATES

October Term 1983

ESTATE OF
WILLIS CORNELIOUS,
Deceased.

TRUDY ANN HALL,
Appellant,
v.
HETTIE TAYLOR,
Respondent.

ON APPEAL FROM

THE SUPREME COURT OF THE STATE OF CALIFORNIA

MOTION TO DISMISS OR AFFIRM

CLIFFORD C. CALDWELL
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Attorneys for Appellee

2. such an argument would contradict the expressed purpose of the Uniform Parentage Act; i.e., to eliminate the distinction between, and unequal treatment of, children born of parents who are married and children born of parents who are not married;

3. in some cases, such as the present case, such an argument would emboss onto section 255(d) of the Probate Code a material condition neither expressed nor implied in that section.

In light of section 255(d), if the basis upon which a party seeks to succeed to all or part of an estate and obtain letters of administration is a parent-child relationship presumed under one of the subdivisions of section 7004(a), it is not necessary for that party (1) to also have established that parent-child relationship through an action under section 7006, or (2) to have vitiated any conflicting presumed parent-child relationships through such a legal action.

Response To Respondent's Arguments

Based upon our reading of respondent's letter brief we find the following arguments.

First, respondent argues that "(t)he 'parent-child' relationship exists where such relationship is presumed and not rebutted or where such relationship is established pursuant to Civil Code Section 7004" (Respondent's Letter Brief, page three)(emphasis original). Assuming that respondent mistakenly referred to section 7004 when she really meant section 7006, we agree with this argument; since the argument is consistent with section 255(d) of the Probate Code and our position set forth above.

Second, respondent argues that appellant has available to her the argument that "the decedent received Appellant into his home and openly held out the Appellant as his natural child"; and that "(t)his would create a conflict in the presumptions of Section 7004(a)(1) and 7004(a)(4)" (Respondent's Letter Brief, page three). We agree.

Third, respondent argues that David Fuller, exclusively, is appellant's presumed father. Respondent's Letter Brief, page three. Based upon the provision of subdivision (a)(4) of section

7004, respondent's acknowledgment that appellant has available to her an argument under that subdivision, and the points and authority set forth above, we disagree with this argument of respondent.

Fourth, respondent makes the summary, and unsupported, allegation that, as between the two presumptions that exist in this case (§7004(a)(1) and §7004(a)(4)), "the presumption of paternity based on marriage of the parties and birth during said marriage (Civil Code §7004(a)(1)) is founded on the weightier considerations of policy and logic and would therefore control" (Respondent's Letter Brief, pages three and four). For the reasons set forth previously in this brief, including but not limited to the fact that section 7004(a)(1) as applied to this case presumes that David Fuller is appellant's natural father when in fact he is not, we disagree with this allegation. Also, we again note that whether or not the presumption based upon marriage will be ultimately favored by the trial court is irrelevant to the questions propounded by this Court. The fact that decedent's conduct toward appellant raised the presumption in section 7004(a)(4) in and of itself demonstrates that appellant is not barred from proving the parent-child relationship that will allow her to succeed to decedent's estate and qualify for letters of administration.

Fifth, based on the summary, and erroneous, position that there is no presumption of a parent-child relationship between decedent and appellant, respondent argues (a) that the only way appellant can establish the necessary parent-child relationship with decedent is by a legal action under section 7006(a)(2), but (b) it is now too late for appellant to pursue such an action. In response to this argument we note the following:

1. as proven above, there is a presumed parent-child relationship between decedent and appellant; said presumed relationship arising pursuant to section 7004(a)(4) and as a result of the conduct of decedent and appellant prior to decedent's death;

2. pursuant to section 255(d), appellant's presumed parent-child relationship with decedent satisfies the probate requirement, in section 255(a), that the parent-child relationship exist prior to the death of decedent;

3. in light of appellant's presumed parent-child relationship with decedent it was not necessary for appellant to

pursue an action under section 7006(a)(2).

Finally, at page eight of her letter brief, respondent makes certain arguments to support the position that at this time it is much too late for appellant to pursue an action under section 7006(a)(2). While we have noted, and proven, that under the facts of this case it is absolutely unnecessary for appellant to have filed an action under section 7006(a)(2), and while we do not contend that the probate proceeding pending in the trial court below constitutes an action under section 7006(a)(2), we feel constrained to show the specious nature of respondent's arguments.

First, respondent notes that decedent is dead, and "unavailable to admit or deny paternity" (Respondent's Letter Brief, page eight). However, decedent expressly admitted paternity during his lifetime by acknowledging that appellant was his daughter (CT 44:22-23). Therefore, the fact that he is unavailable at this time to reiterate that fact is immaterial.

Second, respondent notes that David Fuller is also dead and "unavailable to admit or deny paternity" (Respondent's Letter Brief, page eight). However, scientific fact, in the form of sickle cell anemia tests, proves that David Fuller was not the natural father of appellant (CT 45:6-10, CT 23-25). Therefore, Mr. Fuller's admission or denial of paternity at this time is also immaterial.

Third, respondent argues that "enormous problems of proof" will emerge in connection with any attempt to prove the non-existence of a parent-child relationship between Mr. Fuller and appellant. However, we presently have records of the sickle cell anemia tests of appellant, her mother and David Fuller; and these tests alone establish the non-existence of a parent-child relationship between appellant and Mr. Fuller.

Conclusion

Based upon our reading of respondent's letter brief we find that:

1. both appellant and respondent agree that there are two, alternative, methods by which a person may prove the existence of the parent-child relationship referred to in subdivisions (a) and (d) of section 255 of the Probate Code, i.e., by a presumption under section 7004(a) or by a

legal action under section 7006;

2. both appellant and respondent agree that appellant may argue that decedent is presumed to be her father under the provisions of section 7004(a)(4);

3. both appellant and respondent agree that the presumption that decedent is appellant's father and the presumption that David Fuller is appellant's father create a conflict that must be resolved pursuant to section 7004(b).

We respectfully submit that these undisputed facts establish the further fact that under neither circumstance contained in the two questions propounded by the Court is appellant barred from qualifying for letters of administration in this action.

Post Script

We respectfully take this opportunity to draw the attention of the Court to the fact that another panel of the appellate court below has recently agreed with the position of appellant herein and held that section 621 of the Evidence Code was unconstitutionally applied in a situation where the application did not further public policy:

> "The constitutional flaw in section 621 does not appear on its face but rather in its application in those cases where, as here, it does not further its underlying policies" (Michelle W. v. Ronald W. (1983) 139 Cal.App.3d 24,29).

Respectfully submitted,

LLOYD EDWARD TOOKS,
Attorney for Appellant

LLOYD EDWARD TOOKS
2414 Kathleen Place
San Diego, California 92105
Telephone: (619) 265-1242

Attorney for TRUDY ANN HALL

SUPREME COURT
FILED
FEB 20 1984
LAURENCE P. GILL, Clerk
Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Estate of WILLIS CORNELIOUS, Deceased.	L.A. 31631 Super. Ct. 10992
TRUDY ANN HALL, Petitioner and Appellant, v. HETTIE TAYLOR, Petitioner and Respondent.	NOTICE OF APPEAL

TRUDY ANN HALL, petitioner and appellant herein, hereby gives notice that she is taking an appeal, to the United States Supreme Court, from the final decision and judgment of the California Supreme Court entered in the above-entitled action on February 27, 1984.

This appeal is taken under 28 USC §1257(2).

Dated: February 27, 1984

LLOYD EDWARD TOOKS, Attorney for Trudy Ann Hall

APPENDIX F

(PROOF OF SERVICE BY MAIL -- 1013a, 2015.5 C. C. P.)

STATE OF CALIFORNIA
COUNTY OF San Diego } ss.

I am a resident of/employed in the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address/residence address is:

2414 Kathleen Place
San Diego, California 92105

On February 27, 19 84 I served the within NOTICE OF APPEAL

on the attorney of record for respondent Hettie Taylor in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as follows:

Clifford C. Caldwell, Esq.
PINNEY & CALDWELL
444 South Eighth Street
P.O. Box 710
El Centro, California 92244

I certify (or declare), under penalty of perjury,* that the foregoing is true and correct.

Executed on February 27, 1984 (date) at San Diego (place), California

LLOYD EDWARD TOOKS (Signature)

*Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.

WOLCOTT'S FORM 880 A—REV. 3-79

F-2

LLOYD EDWARD TOOKS
2414 Kathleen Place
San Diego, California 92105
Telephone: (619) 265-1242

Attorney for TRUDY ANN HALL

RECEIVED
FEB 29 1984
JOHN W. KENNERSON, County Clerk
By Lillian M. Fye DEPUTY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Estate of WILLIS CORNELIOUS, Deceased.	L.A. 31631 Super. Ct. 10992
TRUDY ANN HALL, Petitioner and Appellant, v. HETTIE TAYLOR, Petitioner and Respondent.	NOTICE OF APPEAL

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Dated: February 27, 1984

LLOYD EDWARD TOOKS, Attorney for Trudy Ann Hall

APPENDIX G

(PROOF OF SERVICE BY MAIL — 1013a, 2015.5 C. C. P.)

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COUNTY OF San Diego } ss.

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Executed on February 27, 1984 at San Diego, California
(date) (place)

LLOYD EDWARD TOOKS
Signature

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WOLCOTT'S FORM 982 P—REV. 3-78

G-2

ET
5/10
2/1

No. 83-6417

Office - Supreme Court, U.S.
FILED
MAR 15 1984
ALEXANDER L. STEVAS,
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term 1983

Estate of
WILLIS CORNELIOUS,
Deceased.

TRUDY ANN HALL,
Appellant,
v.
HETTIE TAYLOR,
Respondent.

MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

TRUDY ANN HALL, appellant herein, hereby moves this honorable Court for the opportunity to prosecute the subject appeal in forma pauperis; i.e., without being required to prepay fees, costs, or give security therefor.

Dated: March 9, 1984

LLOYD EDWARD TOOKS
2414 Kathleen Place
San Diego, California 92105
Telephone: (619) 265-1242
Attorney for Appellant

TRUDY ANN HALL, Appellant

No. _____

In The

SUPREME COURT OF THE UNITED STATES

_____

October Term 1983

_____

Estate of	)
	)
WILLIS CORNELIOUS,	)
	)
Deceased.	)
	)
TRUDY ANN HALL,	)
	)
Appellant,	)
	)
v.	)
	)
HETTIE TAYLOR,	)
	)
Respondent.	)

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

LLOYD EDWARD TOOKS
2414 Kathleen Place
San Diego, California 92105
Telephone: (619) 265-1242

Attorney for Appellant

I, TRUDY ANN HALL, being first duly sworn, depose and say that I am the appellant in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? Yes. I have been employed for one week, on a part-time basis, at the San Diego Plasma Center, 1025 "F" Street, San Diego, California. I am paid $6.30 per hour, for four (4) hours per day, four (4) days per week.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? No.

3. Do you own any cash or checking or savings account? The only cash I receive results from my earnings at the Plasma Center and my public assistance set forth below. I have a checking account with no funds in it; and I have no savings account.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? I have equity in the house in which I live, but the house is presently in foreclosure due to my default on the house note as a result of my inability to make the payments. The house is worth approximately $50,000. I have an automobile that my father, Willis Cornelious, purchased for me some time ago. I

estimate that the automobile is worth approximately $1500.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

1. LaTasha Hall . . . daughter (14 years old)
2. Tuere Hall . . . daughter (10 years old)
3. Henry Hall . . . son (6 years old)

I am presently receiving public assistance in the form of Aid To Families With Dependent Children (AFDC). That public assistance is $624.00 per month.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjur

Trudy Ann Hall
TRUDY ANN HALL

SUBSCRIBED AND SWORN TO BEFORE ME THIS 12th DAY OF March, 1984.

OFFICIAL SEAL
CAROLYN ANN PETRONELLA
NOTARY PUBLIC - CALIFORNIA
SAN DIEGO COUNTY

STATE OF CALIFORNIA)
)-ss.
COUNTY OF San Diego)

On this 12th day of March in the year 19 84, before me, the undersigned, a Notary Public in and for said State, personally appeared TRUDY ANN HALL, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed it.

OFFICIAL SEAL
CAROLYN ANN PETRONELLA
NOTARY PUBLIC - CALIFORNIA
SAN DIEGO COUNTY
My Comm. Expires Sept. 6, 1985

WITNESS my hand and official seal.

Carolyn Ann Petronella
Notary Public in and for ~~said~~ State.